

**City of Fayetteville Staff Review Form**

**2021-0943**

**Legistar File ID**

**12/21/2021**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Justin Clay

12/1/2021

PARKING MANAGEMENT (430)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Approving a software services agreement with ParkMobile, LLC for mobile payment solutions associated with parking transactions

**Budget Impact:**

N/A

Account Number

Fund

N/A

Project Number

Project Title

**Budgeted Item?** No

Current Budget \$ -

Funds Obligated \$ -

Current Balance **\$ -**

**Does item have a cost?** No

Item Cost \$ -

**Budget Adjustment Attached?** No

Budget Adjustment \$ -

Remaining Budget **\$ -**

V20210527

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF DECEMBER 21, 2021**

**TO:** Mayor and City Council

**THRU:** Susan Norton, Chief of Staff  
Chris Brown, Public Works Director & City Engineer

**FROM:** Justin Clay, Parking Manager

**DATE:** December 1, 2021

**SUBJECT:** **Approving a software services agreement with ParkMobile, LLC for mobile payment solutions associated with parking transactions**

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**RECOMMENDATION:**

Staff recommends converting its mobile app provider from PayByPhone to ParkMobile for use in both the Downtown and Entertainment Districts. This item was unanimously recommended for approval by the Transportation Committee at its meeting held on November 30, 2021.

ParkMobile has been awarded contract 05-50 for its integrated parking management system on the National Cooperative Purchasing Alliance. The NCPA is a national purchasing cooperative that allows the city to leverage the purchasing power of a nationally bid agreement.

**BACKGROUND:**

In 2010, the City entered into a software service agreement with (then) Verrus Mobile Technologies to provide a pay-by-cell solution that allowed patrons visiting the Entertainment District to purchase parking and add additional time to their parking purchase, thus creating a more convenient payment method in addition to the parking pay station. A \$0.35 transaction fee is passed on to the consumer using this service. The \$0.35 transaction fee is recorded as revenue by the City and is then paid out monthly to the software service provider. Verrus Mobile Technologies has since been acquired by PayByPhone, a subsidiary of Volkswagen Financial Services AG.

**DISCUSSION:**

While PayByPhone has been a quality partner and solution for the City, advances have been made in mobile app technology since PayByPhone was first implemented over a decade ago. ParkMobile is an industry leader in parking and other multi-modal options and is commonly used throughout the U.S. thereby increasing the familiarization among visitors and new residents to Fayetteville. In addition, ParkMobile provides real-time parking availability data through its mobile app, offers reserved/prepaid and event management solutions, and allows for validation and coupon code entry.

**BUDGET/STAFF IMPACT:**

No budget or staff impact. The \$0.35 transaction fee remains the same, is paid by the consumer, collected by the City as revenue, and then paid out to ParkMobile monthly. The same is true for the 10% service fee associated with reserved/prepaid parking.

**Attachments:**

ParkMobile Agreement

This ParkMobile Service Agreement (“Agreement”) is made by and between Parkmobile, LLC, a Delaware limited liability company, with offices at 1100 Spring St NW, Suite 200, Atlanta, GA 30309 (“ParkMobile”) and City of Fayetteville, an Arkansas municipality, with offices at 113 W. Mountain St., Fayetteville, AR 72701 (“Client”). This Agreement will become effective as of the last signature date below (the “Effective Date”). In consideration of the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

PARTY CONTACTS			
Client		ParkMobile	
<b>Legal Name:</b>	City of Fayetteville	<b>Legal Name:</b>	Parkmobile, LLC
<b>Contact:</b>	Justin Clay	<b>Sales Rep:</b>	Brooke Krieger
<b>Email:</b>	jclay@fayetteville-ar.gov	<b>Email:</b>	brooke.bustle@parkmobile.io
<b>Phone:</b>	479-575-8277	<b>Phone:</b>	850-321-2074
<b>Address:</b>	City of Fayetteville 113 W. Mountain St. Fayetteville, AR 72701	<b>Address:</b>	Parkmobile, LLC 1100 Spring St. NW Suite 200 Atlanta, GA 30309
		<b>For legal notices:</b>	with a copy to ParkMobile’s Legal Department at the above address and to <a href="mailto:legal-notices@parkmobile.io">legal-notices@parkmobile.io</a> .

SERVICE TERMS	
<b>Services</b>	ParkMobile will provide Client with the Services related to the following types of parking transactions: <b>On-Demand, Reservations</b>
<b>Initial Term</b>	3 years beginning on the Effective Date
<b>Renewal</b>	On expiration of the Initial Term, this Agreement will automatically renew for additional successive one (1) year terms unless either party provides written notice of non-renewal at least sixty (60) days before the end of the then-current term.
<b>Termination</b>	Either party may terminate this Agreement effective immediately on written notice to the other party, if the breaching party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.
<b>Merchant of Record</b>	The parties designate Client as the merchant of record. Client is responsible for the payment of payment processing and related fees. ParkMobile will pass real-time authorized debit/credit card transactions to Client’s processing partner via a gateway solution. <b>If Client elects to use a processing partner with which ParkMobile is not integrated, Client agrees to pay ParkMobile \$0.05 per transaction for this service.</b> ParkMobile will issue invoices to Client on a monthly basis for all fees due to ParkMobile under this Agreement. Client shall pay each invoice within thirty (30) days of the invoice date.

<b>Parking Locations</b>	The Services will be provided to Client in the following locations / geographical territory: <b>all Client locations</b>
<b>Signage</b>	Client will receive one free welcome kit that includes the aluminum signs and/or decal stickers necessary to complete implementation (installation not included). All signage included in the welcome kit is designed using ParkMobile's standard signage templates. Custom signage may be made available to Client for purchase at ParkMobile's current signage rates. Any requested changes to ParkMobile's standard signage templates will be treated as custom signage. Additional and/or replacement signage may be purchased by Client at ParkMobile's then-current signage rates. Installation and maintenance of all signage is Client's sole responsibility.
<b>Governing Law</b>	State of Arkansas
<b>Schedules</b>	This Agreement incorporates the following Schedules: Schedule 1: Client General Terms and Conditions; Schedule 2: Services; Schedule 3: Client Electronic Funds Authorization Form

<b>IMPLEMENTATION FEES</b>			
<b>Description</b>	<b>Units</b>	<b>Rate</b>	<b>Price</b>
Implementation Fee	0	\$250.00	\$0.00
Custom Development	0	\$165.00/hr	\$0.00
<b>Total Implementation Fees:</b>			<b>\$0.00</b>

<b>ADDITIONAL FEES</b>	
Call Center & Customer Support	WAIVED
Client Support & Maintenance	WAIVED
Hosting	WAIVED
Enforcement Portal	WAIVED
Reporting Portal	WAIVED
Marketing & Advertising	WAIVED

<b>USER FEES</b>		
On-Demand User Fee	\$0.35	per transaction
Reservation User Fee	10%	of parking fee
"No-Charge" Reservation Service Fee	\$1.00	per no-charge reservation



The parties have executed this Agreement as of the Effective Date.

**CITY OF FAYETTEVILLE**

By: \_\_\_\_\_

Name:

Title:

Date:

**PARKMOBILE, LLC**

A handwritten signature in blue ink that reads "Tony Stewart".

By: \_\_\_\_\_

Name: Tony Stewart

Title: Chief Legal Officer

Date: 11/30/2021

**SCHEDULE 1:  
CLIENT GENERAL TERMS & CONDITIONS****1. SERVICES**

- 1.1 General.** During the term, ParkMobile will provide the Services to Client in accordance with the terms and conditions of this Agreement.
- 1.2 Launch Date.** The parties will mutually agree upon the launch date for the Services.
- 1.3 ParkMobile Application.** On and after the launch date, Client's Parking Locations, along with associated Parking Information, will be made available to the general public through the ParkMobile Application.
- 1.4 Parking Management Services.** Subject to the license granted in Section 2, Client will be provided access to the Platform to manage Client's Parking Locations and associated Parking Information.
- 1.5 Parking Locations.** The parties agree that ParkMobile does not own, operate, manage, or maintain any Parking Location. Client agrees that ParkMobile is not responsible for the condition or operation of any Parking Location, including, but not limited to, the operation of third-party hardware and/or software-based solutions used by Client at the Parking Location or for the delivery and/or fulfillment of parking or other services at the Parking Location.
- 1.6 Publicity of Services.** Each party will use commercially reasonable efforts to market the Services throughout the Term. All brochures and promotional material to be distributed by Client will be in a form mutually agreed upon by the parties, which will not be unreasonably withheld or delayed.
- 1.7 Reserved.**
- 1.8 PCI DSS.** ParkMobile has obtained, and will continue to maintain throughout the term, Payment Card Industry – Data Security Standard (PCI DSS) certification.
- 1.9 Online Client General Terms & Conditions.** The parties agree that this Agreement supersedes the Client General Terms and Conditions that is publicly available at <https://parkmobile.io/client-terms> with respect to the Services provided under this Agreement.

**2. ACCESS & USE OF PLATFORM**

- 2.1 Provision of Access.** Subject to and conditioned on Client's and its Authorized Users' compliance with the terms and conditions of this Agreement, all applicable laws and regulations, and Client's payment of fees, ParkMobile grants Client a non-exclusive, non-transferable right to access and use the Platform during the Term. Such use is limited to Client's internal use. ParkMobile will provide Client the Access Credentials within a reasonable time following the Effective Date.
- 2.2 Documentation License.** ParkMobile hereby grants to Client a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Client's internal business purposes in connection with its use of the Services.

- 2.3 Use Restrictions.** Client will not, directly or indirectly, and will not permit any third party to, access or use the Platform except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Client shall not, except as this Agreement expressly permits: (a) copy, modify, or create derivative works of the Platform or Documentation, in whole or in part; (b) rent, lease, copy, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Platform or Documentation to any person or entity; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Platform, in whole or in part; (d) bypass or breach any security device or protection used by the Platform or access or use the Platform other than by an Authorized User through the use of his or her own then valid Access Credentials; (e) remove any proprietary notices from the Platform or Documentation; (f) use the Platform or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any IP Right or other right of any person, or that violates any applicable law; (g) upload invalid data, malware, or other software agents through the Platform; or (h) use the Platform for any purpose beyond the scope of the access granted in this Agreement.
- 2.4 Reservation of Rights.** Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any IP Rights in or relating to, the Services, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services are and will remain with ParkMobile.
- 2.5 Changes.** ParkMobile reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of ParkMobile's services to its customers; (ii) the competitive strength of or market for ParkMobile's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law.
- 2.6 Suspension or Termination of Services.** Notwithstanding anything to the contrary in this Agreement, ParkMobile may suspend, terminate, or otherwise Client's, any Authorized User's, or any other person's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) ParkMobile receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires ParkMobile to do so; or (b) ParkMobile believes, in its good faith and sole discretion, that (i) Client or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) Client or any Authorized User is, has been, or is likely to be using the Services for fraudulent, misleading, or unlawful activities; (iii) there is a threat or attack on any of the Services; (iv) Client's or any Authorized User's use of the Services disrupts or poses a security risk to ParkMobile or to any other client, end user, vendor or partner of ParkMobile; or

(v) this Agreement expires or is terminated. This Section does not limit any of ParkMobile's other rights or remedies, whether at law, in equity, or under this Agreement.

### **3. CLIENT RESPONSIBILITIES**

**3.1 Use of Platform Account.** Client is responsible and liable for all uses of the Platform resulting from access provided by Client, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Client must notify ParkMobile immediately of any breach of security or unauthorized use of Client's account.

**3.2 Parking Information.** Client is responsible for setting all rates, zones, and other required information regarding its Parking Locations offered through the ParkMobile Application and for keeping such information up to date within the Platform.

**3.3 Effect of Client Failure or Delay.** ParkMobile is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement.

### **4. SERVICE AND SUPPORT**

**4.1 Scheduled Maintenance.** ParkMobile will use commercially reasonable efforts to schedule downtime for routine maintenance of the Services between the hours of 12:00 a.m. and 4:00 a.m., Eastern Time; however, ParkMobile may modify this window from time-to-time by providing Client with advance notice. If ParkMobile anticipates that it will need to perform maintenance activities that are likely to be disruptive to the use of the Services outside of the scheduled maintenance window, ParkMobile will use commercially reasonable efforts to give Client at least 24 hours prior notice. Notwithstanding the foregoing, ParkMobile reserves the right to perform any required emergency maintenance work outside of the scheduled maintenance window. To the extent practicable, ParkMobile will use commercially reasonable efforts to notify Client before commencing any emergency maintenance outside of the scheduled maintenance window and will use commercially reasonable efforts to limit or avoid impact to use of the Services.

**4.2 Client Support.** ParkMobile will use commercially reasonable efforts to assist Client with any technical support that Client may reasonably require in using the Services. ParkMobile will provide technical support for rate and configuration changes to Client Monday – Friday (excluding holidays) between the hours of 8:00 a.m. and 6:00 p.m. (ET). For issues relating to On-Demand Parking Services, Client may submit a support request via email to [support@parkmobile.io](mailto:support@parkmobile.io). For issues relating to Reservation Parking Services, Client may submit a support request via email to [prs@parkmobile.io](mailto:prs@parkmobile.io). ParkMobile will provide Client with emergency technical support 24 hours a day, seven days a week, 365 days a year. In the event of an emergency involving technical and/or system availability issues, Client may contact the on-call engineer via email to [applicationsupport@parkmobile.io](mailto:applicationsupport@parkmobile.io).

**4.3 End-User Support.** ParkMobile will provide customer support for ParkMobile Users 24 hours a day, seven days

a week, 365 days a year. There are multiple methods that ParkMobile Users can access customer support, such as: ParkMobile's online ticketing system, in-app chat feature, and toll-free phone number.

### **5. CONFIDENTIAL INFORMATION**

**5.1 General.** Neither party will disclose the other party's Confidential Information except to its employees, affiliates, agents, or professional advisors ("**Representatives**") who need to know it and who have a legal obligation to keep it confidential. The receiving party will use the disclosing party's Confidential Information only to exercise rights and fulfill obligations under this Agreement. The receiving party will ensure that its Representatives are also subject to the same non-disclosure and use obligations. The receiving party may disclose the other party's Confidential Information when required by law after giving reasonable notice to the disclosing party, if permitted by law.

**5.2 Personal Data.** In the event a party discloses Personal Data to the other party, the receiving party will have the right to use the Personal Data only as required and necessary to perform its obligations under this Agreement.

### **6. INTELLECTUAL PROPERTY OWNERSHIP**

**6.1 Client Data.** Client Data remains the sole and exclusive property of Client. Client grants ParkMobile a perpetual, irrevocable, royalty-free license to use Client Data in connection with the Services.

**6.2 Client Brand Features.** Client grants to ParkMobile a nonexclusive, nonsublicensable, nontransferable, royalty free license during the term to display Client's Brand Features in connection with providing and/or marketing the Services. ParkMobile will not make any use of Client's Brand Features in a manner that dilutes, tarnishes or blurs the value of such Brand Features.

**6.3 ParkMobile IP.** Client acknowledges that, as between Client and ParkMobile, ParkMobile owns all right, title, and interest, including all IP Rights, in and to the Services, including but not limited to the ParkMobile Application and the Platform.

**6.4 ParkMobile Brand Features.** ParkMobile grants to Client a nonexclusive, nonsublicensable, nontransferable, royalty free license during the term to display ParkMobile's Brand Features in connection with the Services, subject to ParkMobile's Brand Guidelines available at <https://parkmobile.io/company/parkmobile-media-assets/logos/>. Client will not make any use of ParkMobile's Brand Features in a manner that dilutes, tarnishes or blurs the value of such Brand Features.

**6.5 ParkMobile User Data.** ParkMobile User Data remains the sole and exclusive property of ParkMobile. ParkMobile may sublicense certain ParkMobile User Data to Client upon Client's execution of ParkMobile's Data Protection Agreement. Client will not, directly or indirectly: (i) sell or resell ParkMobile User Data in any capacity or form; (ii) create any derivative work using ParkMobile User Data; or (iii) use ParkMobile User Data for purposes other than those specifically allowed in this Agreement. Notwithstanding the foregoing, the parties acknowledge

and agree that ParkMobile will not sublicense or provide any PCI Data to Client.

**6.6 Resultant Data.** Resultant Data remains the sole and exclusive property of ParkMobile. ParkMobile grants Client a revocable, royalty-free, non-exclusive, non-assignable, non-transferable license to applicable Resultant Data for the duration of the term only for Client's internal use in connection with the Services.

**6.7 Reservation of Rights.** ParkMobile reserves all rights not expressly granted to Client in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Client or any third party any IP Rights or other right, title, or interest in or to the ParkMobile Application and/or the Platform.

## **7. FEES AND PAYMENT**

**7.1 Fees.** Client shall pay ParkMobile the fees set forth in the Agreement that incorporates these Client General Terms & Conditions ("Fees") in accordance with this Section 7.

**7.2 Payment Terms.** The parties designate Client as the merchant of record. Client is responsible for the payment of payment processing and related fees. ParkMobile will pass real-time authorized debit/credit card transactions to Client via a gateway solution. Client agrees to pay ParkMobile \$0.05 per transaction for this service. ParkMobile will issue invoices to Client on a monthly basis for all fees due to ParkMobile under this Agreement. Client shall pay each invoice within thirty (30) days of the invoice date. Client shall make all payments hereunder in US dollars to the address or account specified on the applicable invoice.

**7.3 Taxes.** All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on ParkMobile's income.

**7.4 Late Payments.** If Client fails to make any payment when due then, in addition to all other remedies that may be available: (a) ParkMobile may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (b) Client shall reimburse ParkMobile for all costs incurred by ParkMobile in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (c) if such failure continues for thirty (30) days following written notice thereof, ParkMobile may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Client or any other person by reason of such suspension.

**7.5 No Deductions or Setoffs.** All amounts payable to ParkMobile under this Agreement shall be paid by Client to ParkMobile in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

**7.6 Fee Increases.** ParkMobile may increase Fees for any contract year, by providing written notice to Client at least sixty (60) calendar days written notice.

**7.7 Limited Payment Agent.** Client appoints ParkMobile as its agent for the limited purpose of receiving, holding, and settling payments made by ParkMobile Users to Client in connection with the Services. Client acknowledges and agrees that receipt of payment from ParkMobile Users in connection with the Services by ParkMobile shall be deemed the same as receipt by Client itself.

## **8. REPRESENTATIONS AND WARRANTIES**

**8.1 Mutual.** Each party represents, warrants and covenants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other legal entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the representative that is executing this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

**8.2 ParkMobile.** ParkMobile represents, warrants, and covenants to Client that ParkMobile will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

**8.3 Disclaimers.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8.1 AND SECTION 8.2, ALL SERVICES ARE PROVIDED "AS IS." PARKMOBILE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PARKMOBILE DOES NOT WARRANT THAT THE SERVICES OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE. PARKMOBILE SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS.

## **9. INDEMNIFICATION**

**9.1 Mutual.** Each party will indemnify, defend, and hold harmless the other party from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred as a result from any third-party claim, suit, action, or proceeding ("Third-Party Claim") to the extent it arises from a breach of the indemnifying party's representations and warranties under this Agreement.



- 9.2 ParkMobile.** ParkMobile will indemnify, defend, and hold harmless Client from and against any and all Losses incurred by Client resulting from any Third-Party Claim that the Platform or any use of the Platform in accordance with this Agreement, infringes or misappropriates such third party's IP Rights, provided that Client promptly notifies ParkMobile in writing of the claim, cooperates with ParkMobile, and allows ParkMobile sole authority to control the defense and settlement of such claim.
- 9.3 Client.** Client will indemnify, defend, and hold harmless ParkMobile from and against any and all Losses incurred by ParkMobile resulting from any Third-Party Claim arising out of Client's disclosure or use of ParkMobile User Data in violation of this Agreement.
- 9.4 Mitigation.** If any of the Services are claimed to, or in ParkMobile's opinion are likely to, infringe, misappropriate, or otherwise violate any third-party IP Rights, or if Client's use of the Services is enjoined or threatened to be enjoined, ParkMobile may, at its option and sole cost and expense: (a) obtain the right for Client to continue to use the Services as contemplated by this Agreement; (b) modify or replace the Services, in whole or in part, to seek to make the Services (as so modified or replaced) non-infringing, while providing equivalent features and functionality, in which case such modifications or replacements will constitute the Services, as applicable, under this Agreement; or (c) by written notice to Client, terminate this Agreement and require Client to immediately cease any use of the Services.
- 9.5 Sole Remedy.** THIS SECTION 9 SETS FORTH CLIENT'S SOLE REMEDIES AND PARKMOBILE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.
- 10. LIMITATION OF REMEDIES AND DAMAGES**
- 10.1 Exclusion of Damages.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 10.3, IN NO EVENT WILL PARKMOBILE OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (C) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (D) COST OF REPLACEMENT GOODS OR SERVICES; (E) LOSS OF GOODWILL OR REPUTATION; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 10.2 Cap on Monetary Liability.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 10.3, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PARKMOBILE ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED ONE TIMES THE TOTAL AMOUNTS PAID TO PARKMOBILE UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 10.3 Exceptions.** The exclusions and limitations in Section 10.1 and Section 10.2 do not apply to ParkMobile's obligations under Section 9 or liability for ParkMobile's gross negligence or willful misconduct.
- 11. RESERVED**
- 12. GENERAL TERMS**
- 12.1 Assignment.** Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntary, involuntarily, by operation of law, or otherwise, without ParkMobile's prior written consent. No assignment, delegation, or transfer will relieve Client of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 12.1 is void. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns.
- 12.2 Severability.** If a court of competent jurisdiction holds any term or provision of this Agreement to be invalid, illegal or unenforceable, the rest of the Agreement will remain in effect.
- 12.3 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 12.4 Notices.** Any notice or communication permitted or required under this Agreement must be in writing and will be deemed received by the addressee: (a) when received, if delivered by hand with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third business day after the date mailed by certified or registered mail, return receipt requested, postage prepaid. Notices must be sent to the attention of the respective party's legal department at the address set forth at the beginning of this Agreement or such other address as either party may specify in writing. Any notice permitted or required under this Agreement that is sent to ParkMobile shall also be sent via email to [legal-notices@parkmobile.io](mailto:legal-notices@parkmobile.io).
- 12.5 Governing Law.** This Agreement and all related documents, and all matters arising out of or relating to this

Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Arkansas, United States of America (including its statutes of limitations).

- 12.6 Amendment; Waivers.** Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement. No waiver by any party will be effective unless explicitly set forth in writing and signed by the party so waiving. No terms or conditions stated in a Client purchase order, vendor onboarding process or web portal, or any other Client order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void, notwithstanding any language to the contrary therein, whether signed before or after this Agreement.
- 12.7 Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- 12.8 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 12.9 Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure results from any cause beyond such party's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquakes, storms or other elements of nature, pandemics, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- 12.10 Independent Contractors.** The parties to this Agreement are independent contractors. The parties do not intend, and nothing in this Agreement should be construed, to create or enter into any partnership, joint venture, employment, franchise, agency, or similar relationship. Neither party has the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
- 12.11 Export Control.** Client will comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, Client: (i) represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country; (ii) will not (and will not permit any third parties to) access or use any Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) will not submit to any Service any information that is controlled under the U.S. International Traffic in Arms Regulation.
- 12.12 Interpretation.** This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules

referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

- 12.13 Counterparts.** The parties may execute this Agreement in counterparts, including PDF and other electronic copies, which taken together will constitute one instrument.

### 13. DEFINITIONS

"Access Credentials" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Platform.

"Authorized User" means Client's employee, consultant, contractor, and agent who is authorized by Client to access and use the Platform under the rights granted to Client pursuant to this Agreement.

"Brand Features" means a party's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.

"Client Data" means any data specific to Client's operation that is provided by Client to ParkMobile to be used in the provision of Services that is not available to ParkMobile publicly or by other means.

"Confidential Information" means information that one party (or an affiliate) discloses to the other party under this Agreement, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations or becomes public through no fault of the recipient.

"Documentation" means any manuals, instructions, or other documents or materials that ParkMobile provides or makes available to Client in any form or medium and which describe the functionality, components, features, or requirements of the Services.

"IP Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Parking Information" means parking zones, parking rates, parking restrictions, selected payment methods, and other information necessary for the provision of the Services for a specific Parking Location.

"Parking Location" means the location or locations of Client's on-street parking, off-street parking, reservation parking, parking lots, parking decks, permitted parking, and other facilities where ParkMobile Users may park.

"ParkMobile Application" means any and all mobile and/or web applications, services, or interfaces developed, hosted, or managed by, on behalf of, or in partnership with ParkMobile and that are made available to the general

public and that facilitates the payment of parking transactions.

"ParkMobile User" means an end user that uses the ParkMobile Application.

"ParkMobile User Data" means information, data, and other content, in any form or media, that is submitted, posted, or otherwise transmitted by or on behalf of a ParkMobile User, directly or indirectly, through the ParkMobile Application.

"PCI Data" means, as applicable, payment card number, cardholder name, expiration date, card verification code or value, service code, and/or security-related information used to authenticate cardholders and/or authorize payment card transactions

"Personal Data" means (i) any information about an identified or identifiable individual; or (ii) information that is not specifically about an identifiable individual but, when combined with other information, may identify an individual. Personal Data includes names, email addresses, postal addresses, telephone numbers, government identification numbers, financial account numbers, payment card information, license plate information, online identifiers (including IP addresses and cookie identifiers), network and hardware identifiers, geolocation information, and any information that constitutes "personal data" or "personal information" within the meaning of any relevant and applicable data privacy or protection laws.

"Platform" means access-controlled mobile and/or web applications, services or interfaces developed, hosted, or managed by, on behalf of, or in partnership with ParkMobile that are made available to Client to administer, configure, manage and/or monitor parking sessions, parking rates, and/or parking restrictions associated with Client's Parking Locations.

"Resultant Data" means data and information related to Client's, Authorized Users' and/or ParkMobile Users' use of the Services that is used by ParkMobile in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

"Services" means the ParkMobile Application, the Platform, and all other services provided by ParkMobile under this Agreement.

**SCHEDULE 2: SERVICES****ON-DEMAND PARKING SERVICES**

ParkMobile offers a service to ParkMobile Users that facilitates the activation of and payment for on-demand parking using the ParkMobile Application ("On-Demand Parking").

ParkMobile Users may begin and, if applicable, end a parking transaction in a variety of ways: (1) visiting <https://app.parkmobile.io>; (2) calling ParkMobile's IVR System, or (3) using the ParkMobile Application. In order to register with ParkMobile and begin a parking session, a consumer simply provide ParkMobile with the information required by ParkMobile to create an account, including payment method information and license plate number. Thereafter, subsequent parking sessions only require the ParkMobile User to enter or select the applicable parking duration available for the applicable location.

The parking zone code of the Client parking areas are indicated on parking signs or on parking meters. Enforcers of the Client check the validity of parking status real time against the Platform via a web service offering, provided as part of the Services, to determine if a valid parking right exists. This information can be accessed by using a handheld terminal, mobile device or personal digital assistant (PDA).

ParkMobile does not provide or pay for Client's use of handheld terminals, mobile devices or PDAs for enforcement or any data plans or other items needed for communication between such items and the Services.

At their option, ParkMobile Users will receive parking alert services from ParkMobile via SMS, ParkMobile Application push notification or email. The ParkMobile User may be notified, for example, when parked for an extended period of time or when the maximum parking time nears expiration.

ParkMobile Users can use On-Demand Parking anywhere the Services are available.

All parking charges are automatically charged to the ParkMobile User's payment method, and ParkMobile Users have real time access to an online account-based personal page accessible from <https://app.parkmobile.io> to access and print parking history, receipts, and statements.

**RESERVATION PARKING SERVICES**

ParkMobile offers a service to ParkMobile Users that facilitates the activation of and payment for reservation parking using the ParkMobile Application ("Reservation Parking").

For each Parking Location that the parties agree to on-board for Reservation Parking Services, ParkMobile shall make the Parking Location's parking inventory available for sale through the ParkMobile Application and shall market and advertise such availability. The number of parking spaces and corresponding reservation periods and parking rates making up the parking inventory shall be specified by Client and may be altered by Client at any time for unreserved parking inventory.

**Responsibilities of Client.**

In order for ParkMobile to provide Reservation Parking Services, Client shall maintain an agreed upon number of parking spaces or transportation services at the Parking Location which shall be maintained at all times unless ParkMobile is notified otherwise in writing by Client.

If access to the Parking Location is denied for any reason other than a ParkMobile User's error or failure to abide by Client's rules and regulations, Client agrees to forfeit its share of the applicable parking fee and authorizes ParkMobile to refund the entire Parking Fee to the ParkMobile User. If access to the Parking Location is denied because of a ParkMobile User's error or failure to abide by Client's rules and regulations, no Parking Fees will be refunded to the ParkMobile User.

Client shall promote and market the Services through mutually agreed upon methods which shall include:

- a persistent, prominent “call to action” link/button on the parking and/or transportation pages of the Parking Location website(s) that directs users to the Client-branded website created by ParkMobile (e.g. a “Reserve Parking Now” button);
- Embedded content on the parking and/or transportation pages of the Parking Location website(s) describing why and how to reserve parking through ParkMobile (e.g. FAQs, videos, etc.), such content to be provided by ParkMobile; and
- mentions in emails promoting the Parking Location, including “know before you go” emails, all of which shall include a “call to action” to reserve event parking and link to the Client-branded website created by ParkMobile.

Client agrees to use commercially reasonable efforts to obtain for ParkMobile a license to use photo and video assets of the Parking Location (where Client is not the Parking Location owner) and any tenants of a Parking Location in connection with ParkMobile’s marketing of the Services as available at such Parking Location.

**SCHEDULE 3:  
CLIENT ELECTRONIC FUNDS AUTHORIZATION FORM**

This form authorizes Parkmobile, LLC to make payment to a business electronically. All payments will be paid in the account designated by the voided check or bank letter attached to this form. It is the responsibility of Client to notify ParkMobile of any changes pertinent to electronic payments, such as changes in banking information or email address.

**PAYEE/CLIENT INFORMATION**

CLIENT NAME:
ADDRESS:
CONTACT PERSON:
TELEPHONE NUMBER:
PRIMARY FINANCE CONTACT EMAIL:
SECONDARY FINANCE CONTACT EMAIL:
SIGNATURE & TITLE OF AUTHORIZED OFFICIAL:

**FINANCIAL INSTITUTION INFORMATION**

BANK NAME:
ADDRESS:
CONTACT PERSON:
TELEPHONE:
EMAIL:
NINE DIGIT ROUTING TRANSIT NUMBER:
DEPOSITOR ACCOUNT TITLE:
DEPOSITOR ACCOUNT NUMBER:
TYPE OF ACCOUNT:
PLEASE BE SURE TO ATTACH A <b>VOIDED CHECK OR BANK LETTER</b> TO VERIFY THE ABOVE ACCOUNT INFORMATION

This form authorizes Parkmobile, LLC to send credit entries and appropriate debit and adjustment entries electronically or by any other commercially accepted method to the account indicated above and to other accounts specified by Client in the future (collectively, the "Account"). This form authorizes the financial institution holding the Account to post all such entries. This authorization will be in effect until ParkMobile receives a written termination notice from Client and has a reasonable opportunity to act on it.